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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/576,436

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Kevin Brown

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08/28/2009

Ira S Dorman
330 Roberts Street
Suite 200
East Hartford, CT 06108

EXAMINER

QUINN, COLLEEN M

ART UNIT

PAPER NUMBER

3634

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/576,436	Applicant(s) BROWN ET AL.	
	Examiner COLLEEN M. QUINN	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-8,10,12-14,16,18-20,22,23,26,28,31,33,34 and 36-38 is/are pending in the application.
- 4a) Of the above claim(s) 2-4,8 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,6,7,12-14,16,18-20,22,23,26,28,31,33,34 and 36-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4/20/06</u> . | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

This application contains claims directed to the following patentably distinct species:

Species I: Figures 1-11

Species II: Figure 12

Species III: Figure 13

Species IV: Figures 14-16

Species V: Figures 17-28

The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

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During a telephone conversation with Mr. Ira Dorman on August 20th, 2009, a provisional election was made with traverse to prosecute the invention of Species V, Figures 17-28, claims, 1, 6, 7, 12-14, 16, 18-20, 22, 23, 26, 28, 31, 33, 34 & 36-38. Affirmation of this election must be made by applicant in replying to this Office action. Claims 2-4, 8 & 10 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1, 6, 7, 12-14, 16, 18-20, 22, 23, 26, 28, 31, 33, 34 & 36-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear throughout the claims if the applicant is invoking 35 USC 112 sixth paragraph:

A claim limitation is presumed to invoke 35 U.S.C. 112, sixth paragraph, if it meets the 3-prong analysis set forth in MPEP 2181, subsection I:

1. The claim limitation must use the phrase "means for" or "step for";
2. The phrase "means for" or "step for" recited in the claim must be modified by functional language; and
3. The phrase "means for" or "step for" recited in the claim must not be modified by sufficient structure, material, or acts for achieving the specified function.

Currently the applicant's claims are replete with various uses of "means" recitations, some using the language "means for" and some not. The applicant is

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required to review all recitations of "means" throughout the claim language (biasing means, actuating means, friction means, means for moving, means for biasing, etc. etc.) and amend if necessary to meet the above noted three-prong analysis. If the applicant intends to invoke 35 USC 112 sixth paragraph for all or certain "means" recitations the applicant must state clearly on the record which recitations that he wishes to invoke 112 sixth paragraph for, and amend the claim language to meet all three prongs of the above note. If the applicant does not intend to invoke 35 USC 112 sixth paragraph for all or some of the "means" recitations, then the applicant must state on the record which recitations that he does not wish to invoke 35 USC 112 sixth paragraph for.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 6, 7, 12-14, 16, 18- 20, 23, 31, 33, 34 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Argoud (US 7,007,772) in view of Ador (US PG Pub 2002/0112916) and Tupper (US 4,846,075). Argoud discloses a fall arrest device (20) comprising a U-shaped member (32) adapted to accommodate a track (2) of a fall arrest system (figure 1); a cam member (26) including an actuating arm (42) and a

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cam portion (41), the cam member being pivotally mounted (40) on the device such that the cam portion is movable towards the U-shaped member so as to lock the track between the cam portion and an internal surface of the U-shaped member in the event of a fall (abstract); biasing means (unnumbered spring) urging the cam member in a direction away from the internal surface of the U-shaped member to a position in which the cam portion is adapted to allow the track to pass between the cam portion and the internal surface of the U-shaped member (col. 5, line 58- col. 6, line 32) until the event of a fall (col. 7, lines 34-38); actuating means (27) pivotally mounted (50) on the device (figures 4 & 5) adapted in the event of a fall to directly engage with the actuating arm or the cam member (roller 52 directly engages cam 42) and to cause the cam member to pivot against the biasing force of the biasing means such that the cam portion locks the track (figures 2-10); wherein the actuating means (27) is provided with an aperture (space between rod portion of 27) for receiving fastening means (21) for securing a user to the device; wherein the device further includes a plate (31) extending in a plane substantially parallel to the actuating means (figure 2) and provided with a curved aperture (35) for receiving the fastening means (figures 2-10); and wherein the track is supported along its length by end and intermediate plates (3; figures 1, 6 & 23); wherein the intermediate bracket (3) is formed intermediate end portions thereof (figure 1) with inclined faces (figure 6) whereby a portion of the track is exposed intermediate the end portions for frictional engagement with the frictional bearing surfaces (56) on the inside face of the device and with the cam portion of the fall arrest device (figure 6); and wherein the end portions comprise divergent faces (faces of 11) extending from the

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intermediate bracket and adapted to engage the inside of the track and are interconnected by means lateral connecting portions (13) provided at each side of the track (figures 1, 6 & 23). Argoud does disclose friction means, a lock plate or an intermediate member passing through the actuating means aperture for connecting the fastening means.

However, Ador teaches a fall arrest device (20) for engaging a track (21) wherein the fall arrest device comprises a body that engages the track (figure 2), a cam member (42, 52), actuating means (50), a fastening means (22), and intermediate member (unnumbered 2nd carabiner above 22 best seen connected 22 to 50 in figure 1); and a friction means (28) comprising a cylindrical post (figures 2-9); the axially extending surface of the post engaging the track (figures 1-9); wherein one of ordinary skill in the art would understand that due to its location so close to the track (figures 2-10) and outer material layer of neoprene, the friction means presses against the track and would require a minimum load to cause the friction means to roll and therefore allow the device to move along the track, providing an easily operated frictional component for engaging the track as the device moves along. Although Ador only teaches one frictional means post, the Examiner takes Official Notice, and refers to MPEP 2144.04 VI.B. *Duplication of Parts*, that one of ordinary skill in the art would understand that since providing a second frictional means post would only further add to the amount of frictional control of the device, a second post would not add any unexpected results, and would therefore be a matter of design choice for the user depending on how freely the user requires or desires the device to move along the track.

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Additionally, Tupper teaches a fall arrest device (figure 1) for engaging a track (11) wherein the fall arrest device comprises a body that engages the track (figure 1), a cam member (27) and a lock plate (22) which is movable towards and away from the path of the track (figures 1 & 2) through the device body outsides (10), the lock plate including biasing means (30) adapted to bias the plate to a position in which it co-operates with the U-shaped member (figure 1) to prevent the device being removed from the track but allowing it to still pass along the track (col. 6, line 26- col. 7, line 68); the lock plate including a release button (33) for moving the lock plate into its desired position (col. 7, lines 20+), providing a lock plate easily manipulated into desired locked, and unlocked positions.

Therefore, it would have been obvious to one of ordinary skill in the art to provide the device of Argoud with the intermediate member and friction means of Ador and the lock plate of Tupper in order to provide a more versatile and controllable fall arrest device.

Claims 22, 26 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Argoud, Ador, and Tupper as applied to claims 1, 6, 7, 12-14, 16, 18- 20, 23, 31, 33, 34 and 36-38 above, and further in view of Chou. Ador fails to teach the friction means to be movable mounted on the device or means to bias and manually move the friction means to or away from the track.

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However, Chou teaches a device comprising a body for engaging a track (figure 1) wherein the device comprises a friction means (4221 4211) that is biased (6) toward engaging the track (cable) that is movable towards and away from the track by the use of a control button (7) that adjusts how much the friction means engage the track (col. 5, lines 7-11), providing a speed control to the track engaging device.

Therefore, it would have been obvious to one of ordinary skill in the art to provide the device of Ador with a movable and controllable friction means as taught by Chou in order to provide a fall arrest device with greater speed control for when the user requires the device to slide along the track.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to COLLEEN M. QUINN whose telephone number is (571)272-6289. The examiner can normally be reached on 8:30AM-5:00PM Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on (571) 272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KATHERINE W MITCHELL/
Supervisory Patent Examiner, Art
Unit 3634

/C. M. Q./
Examiner, Art Unit 3634